S/N:4945.00-00

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200252098

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T:EO:B4

Date: OCT 1 2002

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:
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Dear Sir or Madam:

This is in reference to a letter dated June 4, 2002, requesting rulings that your payments in connection with co-sponsorship of certain programs will constitute qualifying distributions directly for the active conduct of exempt purposes under section 4942(j)(3) of the Internal Revenue Code; and, that payments in connection with co-sponsorship of the programs will not constitute taxable expenditures under section 4945(d)(3) or 4945(d)(4).

You are exempt under section 501(c)(3) of the Code and have been classified as a private operating foundation within the meaning of section 4942(j)(3).

You were established to advance educational purposes within the meaning of section 501(c)(3) and 170(c)(2)(B) of the Code. Your particular educational objective is to encourage study, discussion, and reflection on principles of and the ideal of a society of free and responsible individuals. You advance your educational purposes through a number of different channels, including organizing and conducting multi-day conferences where conferees explore, discuss, and develop thought regarding principles of You hold scores of such conferences each year throughout the United States, Canada, Latin America, Europe, and Australia. Through over forty years of involvement in educational programs involving you have developed specialized skills and expertise in the area, and maintain a salaried staff of professionals who supervise and conduct educational programs and activities.

You internally classify each of your conferences based on format, typically as a colloquium

or a symposium. In many respects, these two conference types employ a similar organizational structure. In both cases, you carefully select each conferee based upon his or her educational or professional background, writings, academic position, and previous involvement with your conferences (or other similar programs). For your purposes, the key difference between a colloquium and a symposium is that, for a symposium, you require some conferees to prepare original papers for discussion. With both conference types, however, prior to the conference all conferees receive specific materials to study in order to prepare for discussion and debate. You expect the conferees to engage actively in the conference's exploration of the selected issues and materials (including, in the case of a symposium, the papers presented by other conferees). Because each conferee must take an active part in the discussion and debate based on that person's special experience and perspective, you only invite a small number of individuals to participate in any given conference.

Ultimately, the conference activities and discussions are summarized in written reports for your ongoing use in studying and promoting principles of Conferees also publish materials, give speeches, teach courses, and engage in other pursuits pertaining to topics and ideas developed at the conferences. Although you may pay honoraria or other stipends (if appropriate) to conferees, such payments are not grants for travel, study, or other similar purposes but are instead payments for the services that the individuals render to you through their active participation and corresponding advancement of your knowledge of particular issues.

Based on your desire to expand and increase the scope of your work in an economic and efficient manner as possible, you recently have begun to consider co-sponsoring educational programs with other educational organizations that, like you, desire to advance the principles of and the ideal of a society of free and responsible individuals. You anticipate that most prospective co-sponsors will be nonprofit institutions already recognized as tax-exempt under section 501(c)(3) of the Code and as public charities under section 509(a). Under appropriate circumstances, you also may consider entering into co-sponsorship relationships with foreign nonprofit organizations (e.g., foreign universities) or even for–profit entities, so long as any such programs are structured wholly to advance educational and other exempt purposes.

As examples of the types of programs you may undertake, you are currently considering proposals to co-sponsor the following four programs:

B, a tax-exempt organization under section 501(c)(3) and a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi), has proposed a seven-pronged project for the development of faculty, fellows, outstanding upper classmen, summer interns, and others, designed to improve how principles of are taught in American universities;

C, a tax-exempt organization under section 501(c)(3) and a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi), has proposed a joint program involving several conferences for students, non-academic professionals, and others, each centered around specific principles of ,

D, a tax-exempt organization under section 501(c)(3) and a public charity under sections

509(a)(1) and 170(b)(1)(A)(vi), has proposed a co-operative effort involving a summer academy for high school teachers to improve their teaching of principles of and

E, a foreign nonprofit university, with the educational purpose of teaching and disseminating the ethical, legal, and economic principles of a society of free and responsible persons, has proposed a collaboration to present Spanish language versions of colloquia and symposia, directed to native Spanish speakers and targeted primarily, although not exclusively, at a Latin American audience.

The E program, as proposed, closely mirrors the structure of your current conferences in that it contemplates the active involvement of recognized scholars, writers, professionals and other qualified individuals, as conferees in discussions and other program activities. E similarly expects to pay the conferees compensation (in the form of stipends or honoraria) for the services that they render through the program. By contrast, the B, C and D programs adopt a more seminar-like structure, where individual participants attend educational presentations but do not necessarily act in the same contractual capacity as conferees in your colloquia and symposia. Programs like those proposed by B, C and D are materially different from your conferences in that B, C and D participants will be more like students than conferees; the E program on the other hand, as with your past conferences, will assemble groups of qualified conferees to help explore, discuss, and develop thought regarding principles of in the context of different cultures and changing world dynamics.

You indicate that although for analytical purposes this ruling request differentiates between conferees (in your or E program conferences) and other program participants, the hope is that all co-sponsored program participants (even in the seminar-style programs) will experience educational challenges that require individual preparation, study, and thought, similar to the involvement required of full conferees. Thus, in a sense, there will be no truly "passive" participants in any of the programs, just as there are no "passive" conferees at the colloquia and symposia already offered by you (or to be offered through the E program). In each of the programs, all participants will think actively and engage fully in studying and learning the subject matters of the program. The level of prior experience, education, and prior accomplishment expected of program participants in the B, C and D programs, however, will not be as great as the criteria set for full conferees at your (or E program) conferences.

You anticipate that consideration of each prospective co-sponsored program will begin with the submission of a proposal from the co-sponsor, similar to the proposals under consideration in connection with each of the four programs outlined above. A proposal generally will describe the objectives of the particular program, the manner in which the program will be conducted, the roles and responsibilities of each co-sponsor, and the costs associated with the program. Before agreeing to co-sponsor any program, you will review the proposal carefully to ensure that the program will advance your educational and other exempt purposes and will be structured in a manner consistent with your status as a private operating foundation. Proposals from foreign educational organizations and from for-profit entities (if any) will receive particular scrutiny to ensure that exempt educational purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) will be advanced and that no private innurement or inappropriate private benefit will arise.

If the proposal satisfies your initial review, you and the co-sponsor will execute a program agreement. The agreement will identify the particular arrangements under which you and the co-sponsor will participate in the program and will specify the rights and obligations of each party. In this regard, the agreement will state that your co-sponsor will bear primary responsibility for most of the operational aspects of the program, which must be conducted in a manner consistent with the agreement. The agreement will require the co-sponsor to work closely with you, however, regarding all major decisions. For example, the co-sponsor will communicate regularly with you during the planning and implementation of the program. The co-sponsor also will provide periodic written activity and financial reports to you, including final, comprehensive reports after the program's completion, regarding the conduct, outcomes and finances of the program. Moreover, the agreement will require you and the co-sponsor to meet, at least annually, to review all activities conducted since the last meeting in connection with the program, to evaluate the program's overall effectiveness in promoting your respective educational and exempt purposes, and to consider modifications and improvements to the programs (or to future co-sponsored programs, as applicable).

The agreement also will document the active role played by you in the planning, implementation, and evaluation of each program. Of particular significance, the agreement will require you to appoint as a "program manager" a member of your staff (or other representative engaged directly by you) who will serve as your primary contact with respect to the program. Unless otherwise directed by you, the program manager will have responsibility for administering and supervising the planning, inception, conduct, and evaluation of the program on your behalf. Through the program manager or other representative, you will participate actively in each program in the following ways:

(1) You will work closely with the co-sponsor in planning all substantive elements of each program, such as making determinations about the structure and conduct of the program; selecting or approving a syllabus, curriculum, readings, and similar materials in connection with the program; and selecting or approving facilitators (i.e., teachers or presenters) for the program.

(2) You will consult with the co-sponsor, as appropriate under the circumstances, regarding the planning of all non-substantive elements of the program, such as selecting and contracting for the site for the program; scheduling and purchasing travel and lodging for the facilitators and participants in the program; recommending and arranging appropriate food and beverage service; and registering and communicating with conferees or participants in the program.

(3) You will have the opportunity to review all contracts to be executed in connection with the substantive and non-substantive elements of the program.

(4) You will communicate regularly with the co-sponsor during the planning and implementation of the program.

Where a program follows a seminar-like structure and individuals attend more to observe, question, and learn, rather than to contribute to the substance of the program (as a conferee

would do), you will have no role in selecting such program participants. You will participate with a co-sponsor in the selection process only with respect to full conferees, as illustrated by your own colloquia and symposia and the proposal submitted by E.

A program manager or other representative also will be entitled to attend all or part of each program for which he or she bears responsibility. Through such attendance, you will be able to ensure that a program is being conducted in a manner consistent with the proposal and agreement.

The agreement contemplates that you will provide significant financial or other support for the program. Such support typically will be discussed in general terms in the proposal, and the agreement will require the parties to develop and approve a more specific budget for the programs, including revenue, expenses, capital contributions by the parties, and similar matters. The program will be conducted in compliance with the program budget. You do not anticipate that the co-sponsored programs will yield any net revenue (above actual program costs) for you or its co-sponsors. If such revenues are generated, however, they will shared as specified in the program budgets. You will use any such revenues you receive to promote your educational and other exempt purposes or to engage in other activities appropriate for an organization that is exempt under section 501(c)(3) and is classified as a private operating foundation under section 4942(j)(3).

The agreement also will specify various other details in connection with the co-sponsorship of the program, such as defining the parties' respective rights with regard to intellectual property developed through the program and identifying a name for the program that recognizes the involvement of you and the co-sponsor. Most significantly, the agreement will contain various provisions ensuring that the programs will advance only purposes described under section 501(c)(3) of the Code. For example, you will be excused from performing any obligations under the agreement that would, in your reasonable judgement, adversely affect your status as a tax-exempt organization under section 501(c)(3) or as an exempt private operating foundation described in sections 4940(d) and 4942(j)(3). The agreement also will state expressly that the body of the agreement will control in the event of any conflict between the agreement and the proposal, thus further ensuring that the co-sponsorship will retain its nonprofit focus. You and the co-sponsor may spell out additional details in the agreement, as appropriate under particular circumstances, to guarantee the advancement of educational and other exempt purposes.

Section 170(c)(2)(B) of the Code refers to organizations organized and operated exclusively for, among others, charitable and educational purposes.

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 4942(a) of the Code imposes an excise tax upon the undistributed income of a private foundation.

Section 4942(g)(1) of the Code provides, in general, that qualifying distributions are direct expenditures for 170(c)(2)(B) charitable purposes or for assets to be used for these purposes.

Such distributions include payments to public charities and operating foundations but not payments to organizations controlled by the foundation (or disqualified persons) or to private foundations unless the requirements of section 4942(g)(3) are met.

Section 4942(j)(3) of the Code defines an operating foundation as any organization which makes qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of its adjusted net income or its minimum investment return. In addition it must satisfy the requirements of the assets, endowment or support test described in the applicable sections of the regulations.

Section 53.4942(a)-3(a)(2) of the Foundation and Similar Excise Taxes Regulations, in relevant part, defines the term qualifying distribution to mean any amount (including program related investments and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or 170(c)(2)(B) of the Code, other than any contribution to a private foundation which is not an operating foundation or to an organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation.

Section 53.4942(b)-1(b)(1) of the regulations provides that qualifying distributions are not made by a foundation "directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose" unless such qualifying distributions are used by the foundation itself, rather than by or through one or more grantee organizations which receive such qualifying distributions directly or indirectly from such foundation. Thus, grants made to other organizations to assist them in conducting activities which help to accomplish their charitable, educational, or other similar exempt purpose are considered an indirect, rather than direct, means of carrying out activities constituting the charitable, educational, or other similar exempt purpose of the grantor foundation, regardless of the fact that the exempt activities of the grantee organization may assist the grantor foundation in carrying out its own exempt activities.

Section 53.4942(b)-1(b)(2) of the regulations provides that if a foundation makes or awards grants, scholarships, or other payments to individual beneficiaries to support active programs conducted to carry out the foundation's charitable, educational, or other similar exempt purpose, such grants, scholarships, or other payments will be treated as qualifying distributions made directly for the active conduct of exempt activities for purposes of paragraph (a) of this section only if the foundation, apart from the making or awarding of the grants, scholarships, or other payments, otherwise maintains some significant involvement (as defined in subdivision (ii) of this subparagraph) in the active programs in support of which such grants, scholarships, or other payments were made or awarded. Whether the making or awarding of grants, scholarships, or other payments constitutes qualifying distributions made directly for the active conduct of the foundation's exempt activities is to be determined on the basis of the facts and circumstances of each particular case. The test applied is qualitative, rather than a strictly quantitative, one. Therefore, if the foundation maintains a significant involvement (as defined in subdivision (ii) of this subparagraph) it will not fail to meet the general rule of subparagraph (1) of this paragraph solely because more of its funds are devoted to the making or awarding of grants, scholarships, or other payments than to the active programs which such grants,

scholarships or other payments support. However, if a foundation does no more than select, screen, and investigate applicants for grants or scholarships, pursuant to which the recipients perform their work or studies alone or exclusively under the direction of some other organization, such grants or scholarships will not be treated as qualifying distributions made directly for the active conduct of the foundation's exempt activities. The administrative expenses of such screening and investigation (as opposed to the grants or scholarships themselves) may be treated as qualifying distributions made directly for the active conduct of the foundation's exempt activities.

Section 53.4942(b)-1(b)(2)(ii)(B) of the regulations provides that a foundation will be considered as maintaining a significant involvement in a charitable, educational, or other similar activity in connection with which grants, scholarships, or other payments are made or awarded if the foundation has developed some specialized skills, expertise, or involvement in a particular discipline or substantive area (such as scientific or medical research, social work, education, or the social sciences), it maintains a salaried staff of administrators, researchers, or other personnel who supervise or conduct programs or activities which support and advance the foundation's work in its particular area of interest, and, as a part of such programs or activities, the foundation makes or awards grants, scholarships, or other payments to individuals to encourage and further their involvement in the foundation's particular area of interest and some segment of the programs or activities carried on by the foundation (such as grants under which the recipients, in addition to independent study, attend classes, seminars, or conferences sponsored or conducted by the foundation, or grants to engage in social work or scientific research projects which are under the general direction and supervision of the foundation).

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of a private foundation.

Section 4945(d)(3) of the Code defines the term taxable expenditure to include any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes, unless such grant is made pursuant to an objective and nondiscriminatory procedure approved in advance by the Secretary pursuant to section 4945(g) of the Code.

Section 4945(d)(4) of the Code defines the term taxable expenditure to include any amount paid or incurred by a private foundation as a grant to another organization unless (i) such organization is described in section 509(a)(1), (2), or (3) or is an exempt operating foundation or (ii) the private foundation exercises expenditure responsibility with respect to the amount paid.

Section 53.4945-4(a)(1) of the regulations defines the term taxable expenditure generally to include any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes unless the grant procedure satisfies the approval requirements of section 4945(g) of the Code.

Section 53.4945-4(a)(2) of the regulations defines the term grants to include such expenditures as scholarships, fellowships, internships, prizes, and awards. Payments (including salaries, consultants' fees and reimbursement for travel expenses such as transportation, board, and lodging) to persons (regardless of whether such persons are individuals) for

personal services in assisting a foundation in planning, evaluating, or developing projects or areas of program activity by consulting, advising, or participating in conferences organized by the foundation do not ordinarily constitute grants.

Section 53.4945-5(a)(1) of the regulations defines the term taxable expenditure generally to include an amount paid by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), 509(a)(2), or 509(a)(3) of the Code, unless the private foundation exercises expenditure responsibility with respect to the grant.

Section 53.4945-5(a)(2) of the regulations defines the term grant, for purposes of the restriction upon payments to other organizations, by referring to section 53.4945-4(a)(2) of the regulations.

Based on the information submitted, we rule that your payments in connection with co-sponsorship of the programs, as described above, will constitute qualifying distributions directly for the active conduct of exempt purposes under section 4942(j)(3) of the Code. Through over forty years of involvement in educational programs to advance principles of and the ideal of a society of free and responsible individuals, you have developed specialized skills and expertise in this area. You maintain a salaried staff of professionals who supervise and conduct your educational programs or activities. In connection with the proposed programs, your payments will encourage and further the education and participation of many individuals in the subject of liberty, and potentially introduce them to other segments of your programs and activities. You have also shown that you will maintain a rigorous system of oversight and supervision of the payments you make in connection with the programs.

Therefore, based on the aforementioned facts, you are maintaining a significant involvement in the programs, within the meaning of section 53.4942(b)-1(b)(2)(ii)(B) of the regulations, and you may treat these payments as distributions for the direct and active conduct of exempt purposes under section 4942(j)(3) of the Code.

Your payments in connection with co-sponsorship of the programs, as described above, will not constitute taxable expenditures under section 4945(d)(3). You have represented that you will not make any grants to individuals in connection with the programs. You contemplate that you will only make payments to the organizations that co-sponsor the programs. As previously mentioned, such payments will not be grants but will be payments for the services such organizations render under the agreements in connection with the programs. Any payments to full conferees will not be grants, rather they will constitute honoraria or other stipend for purposes of section 4945 of the Code. Therefore, your payments in connection with the co-sponsorship of the programs will not be taxable expenditures under section 4945(d)(3) of the Code.

Furthermore, the payments made in connection with the co-sponsorship of the programs will not be taxable expenditures under section 4945(d)(4) of the Code. You have represented that you will make these payments, pursuant to the provisions of the proposal, the agreement, and the program budget, as applicable, to compensate or reimburse each co-sponsor for the particular services it will perform in connection with the programs. The payments will assist you

in planning, evaluating, and developing projects and areas of program activity. Because such payments represent direct compensation or reimbursement for services the co-sponsors will perform, alongside you, in connection with the programs (as opposed to grants for the co-sponsor to conduct their own exempt activities), the payments will not be taxable expenditures under section 4945(d)(4) of the Code.

Accordingly, based on the above stated facts and circumstances, we rule as follows:

1. Payments made by you in connection with your co-sponsorship of the programs will constitute qualifying distributions directly for the active conduct of your exempt purposes under section 4942(j)(3) of the Code.

2. Payments made by you in connection with your co-sponsorship of the programs will not constitute taxable expenditures under section 4945(d)(3) or 4945(d)(4) of the Code.

We are informing the TE/GE office of this action. Please keep a copy of this ruling with your organization's permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4